

Mr Singleton's activities. Mr Singleton resigned in September 2006, by which time Ms Stein had begun a period of maternity leave.

[5] After Ms Stein's departure the company identified more serious concerns about Mr Singleton's activities, and sought to address Ms Stein's knowledge of them. In a letter dated 17 October 2006 Mr Mann asked Ms Stein to explain why:

- (a) a poor standard of service had been provided to a major client, and why she did not advise anyone in Garrard's about the loss of the client's business;
- (b) she did not inform Garrard's of Mr Singleton's employment with a company named ISS Limited, and why she believed this employment would not constitute a conflict of interest;
- (c) she did not inform Garrard's that, because of Mr Singleton's employment with ISS Limited, clients were saying they would not continue their business relationship with Garrard's; and
- (d) a cheque made out to Garrard's was deposited in the bank account for a business of Mr Singleton's.

[6] Ms Stein replied by letter dated 18 October 2006. The letter was headed 'without prejudice', but I doubt the privilege was properly invoked. In any event, any privilege was waived at the investigation meeting.

[7] In the letter Ms Stein explained her position. She:

- (a) was unaware of any more than one concern of the major client's, and was unaware the client's business had been lost;
- (b) did not believe that Garrard's was unaware of Mr Singleton's arrangement with ISS Limited, and did not believe there was a conflict of interest in Mr Singleton's employment with ISS Limited because that company was not engaged in the same industry as Garrard's;
- (c) was unaware of any concerns Garrard's clients had about Mr Singleton's employment with ISS Limited; and
- (d) was unaware of the banking of the cheque and did not do the banking for Mr Singleton's business.

[8] By letter dated 27 October Mr Mann advised that four more cheques made out to Garrard's had been deposited in Mr Singleton's business account. Subsequently even more of these cheques were found, and the matter was referred to the Police.

[9] Ms Stein returned to work on 8 January 2007. It was common ground that she had advised Mr Mann in September 2006 of her expected date of return, but she had not given the written notice regarding her return which is required under s 39 of the Parental Leave and Employment Protection Act 1987. Accordingly, her arrival was unexpected.

[10] Moreover the concerns about Mr Singleton's activities, and Ms Stein's action or inaction in respect of them, remained unresolved. The acting manager on-site suggested Ms Stein go home and await further contact, which she did.

[11] By letter dated 9 January 2007 Mr Mann advised Ms Stein:

"You will be aware that there are a number of matters outstanding in regard to the company's accounts, payment for a chain saw, fraudulent processing of cheques and actions which have resulted in a significant loss of new business for the New Zealand operation.

Some of these matters are now the subject of a police enquiry.

The company is not prepared to allow you to resume your duties until such time as the police have completed their enquiries and any legal proceedings are completed."

[12] The parties' written employment agreement provided for suspension as follows:

"14.5 In conducting an investigation into suspected serious misconduct the Company may after consultation with the employee, suspend the employee on full pay for a maximum period of three days pending an investigation into the alleged misconduct."

[13] On receipt of the 9 January letter Ms Stein sought legal advice. Her solicitors wrote a letter dated 11 January 2007 protesting against Garrard's action. By letter dated 13 January 2007, Mr Mann responded to the concerns and said further:

“... we advise the company is not prepared to maintain payment of any wages while your client is suspended from her position.

... I have been instructed to advise that the company is not prepared to commit any resources or time to this matter until the investigation by the police is concluded.”

[14] In a letter dated 23 January 2007 Ms Stein’s solicitors advised Ms Stein had indicated she did not intend to return to her employment, and raised her personal grievance on the ground of unjustified dismissal.

Determination

1. Existence of a dismissal

[15] The suspension was imposed in breach of clause 14.5 of the employment agreement in that:

- (a) Ms Stein was not consulted;
- (b) the suspension was to be without pay; and
- (c) not only was it inevitable that the suspension would be for more than three days, but its terms meant it could continue for an undefined period of up to several months.

[16] These breaches are so far-reaching in their effect that I consider Garrard’s actions repudiatory of the employment agreement. Ms Stein’s indication that she would not return to work was no more than a response to this. She did not resign. She was dismissed.

2. Justification for the dismissal

[17] Garrard’s had not completed its investigation into Ms Stein’s knowledge of or role in Mr Singleton’s activities, and was not in a position to form a conclusion about whether Ms Stein was guilty of any misconduct. It was not possible to justify the dismissal.

[18] Accordingly I find Ms Stein has a personal grievance on the ground of her unjustified dismissal.

3. Remedies

[19] Five weeks after her employment ended, Ms Stein obtained alternative employment at the same rate of pay. She is therefore entitled to reimbursement of the remuneration lost as a result of her grievance in the sum of $5/52 \times \$35,000 = \$3,365.38$ (gross). I order accordingly.

[20] Ms Stein is also entitled to compensation for injury to her feelings resulting from the personal grievance. Some of her evidence regarding injury to her feelings was directed at the company's questioning of her rather than the basis of the unjustified dismissal, namely the imposition of the suspension in breach of clause 14.5. The company was entitled to question her, and the matter of the banking of the cheques in particular was serious. I do not accept that the questioning was conducted in an inappropriate way. As for the circumstances of the suspension, on Ms Stein's evidence the injury associated with the suspension concerned the unacceptability of being expected to wait, unpaid, while the police enquiry was conducted.

[21] Overall there was relatively little evidence of injury, so a relatively modest award is warranted. Accordingly Garrard's is ordered to pay to Ms Stein the sum of \$4,000 as compensation for injury to her feelings.

[22] I do not believe any reduction in remedies is warranted as Ms Stein did not contribute to the situation giving rise to the grievance.

Payment of monies owing

[23] Garrard's acknowledged it is obliged to pay holiday pay. The amount owed is \$3,651.02 and payment is ordered accordingly.

[24] The parties agreed that Ms Stein made a payment in respect of road user charges from her personal funds instead of the company's. The amount she paid was \$491.81, from which she agreed to deduct a payment in respect of a chainsaw Mr Singleton had obtained. Accordingly the outstanding sum for which Ms Stein is to be reimbursed is \$204.93.

Summary of orders

[25] Garrard's is ordered to pay to Ms Stein:

- (a) \$3,365.38 (gross) as reimbursement of remuneration lost as a result of her grievance;
- (b) \$4,000 as compensation for injury to feelings arising out of the grievance;
- (c) \$3,651.02 (gross) as holiday pay; and
- (d) \$204.93 as reimbursement for her payment of road user charges.

Costs

[26] Costs are reserved.

[27] If either party seeks a determination of the matter from the Authority they shall have 28 days from the date of this determination in which to file and serve memoranda setting out their positions. If either wishes to rely to the other, there shall be a further 7 days from the date of receipt of the relevant memorandum in which to file and serve such reply.

R A Monaghan

Member of the Employment Relations Authority